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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,646	04/10/2001	Carey Phillip Atkin	10378/3	5370
26646	7590	11/24/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			NGUYEN, THAN VINH	
			ART UNIT	PAPER NUMBER
			2187	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20041117

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Than Nguyen
Examiner
Art Unit: 2187

Office Action Summary

Application No.

09/829,646

Applicant(s)

ATKIN, CAREY PHILLIP

Examiner

Than Nguyen

Art Unit

2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-28 and 56 is/are allowed.
- 6) ☒ Claim(s) 29-34, 36, 41-48, 51 and 52 is/are rejected.
- 7) ☒ Claim(s) 35, 37-40, 49, 50, 53-55 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Reissue Applications

1. Claims 1-56 are pending. Claims 8-56 are newly added.
2. The preliminary amendment, filed 4/10/01.
3. While there is concurrent litigation related to this reissue application, action in this reissue application will NOT be stayed because of applicant's request that the application be examined at this time. Due to the related litigation status of this reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 29-34,36,41-48,51,52 are rejected under 35 U.S.C. 102(e) as being anticipated by Beeler (US 5,819,020).

As to claim 29-32,41,45,51:

6. Beeler teaches a real time backup system having:
 - means for providing a migration session (file server 11); and
 - means for controlling the migration session for data to be migrated from a source volume of the plurality of storage volumes to a target volume of the storage volumes, the application program enabled during execution (file server; 8/58-9/15);

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wherein **at least one** of the following is satisfied:

the target volume is larger than the source volume (target larger than source; 2/25-31); and

the data migration arrangement provides for allowing a selective non-destructive I/O operation at the target volume (user control whether the deleted target files are to be purged; 6/52-63).

As to claim 33:

7. Bealer teaches identifying a communication data set (communication parameters; Fig. 14).

As to claim 34:

8. Bealer teaches the migration session including many phases (Fig. 14, many steps/phases).

As to claim 36:

9. Bealer teaches migration sessions providing concurrent data migrations (multiple operations; 5/14-16).

As to claim 42-44,52:

10. Bealer teaches providing purging of the target volume before data is migrated (6/52-62).

As to claim 46:

11. Bealer teaches reading a target volume parameter (reading file information; 6/55-60).

As to claim 47,48:

12. Bealer teaches reading target volume a target volume parameter and modifying the target volume data (file modification; 9/30-48).

Allowable Subject Matter

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13. Claims 1-28,56 are allowed.

14. As to independent claims 1,26,27,28 the prior art does not teach the claimed computer system/arrangement having a data migration program/means having the combination of modules/means set forth in the claim including the claimed modules/means.

15. Claims 2-25,56 are also allowed for incorporating the limitations of claim 1, and further limitations.

16. Claims 35,37-40,49,50,53-55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. As to claim 35, the prior art does not teach the migration phases includes an activation phase, a copy phase, a refresh phase, a quiesce phase, a synchronize phase, a redirect phase, a resume phase and a termination phase.

18. As to claim 37, the prior art of record does not teach the computer system having two operating systems, each OS including an instance of the data migration arrangement, one instance being a master and the other a slave, operating in a master-slave relationship.

19. Claims 38-40 are also allowable for incorporating the limitation of claim 37, and further limitations.

20. As to claim 49,50,53 the prior art does not teach preventing an I/O operation if the I/O operation is for at least one of reading volume data other than a target volume and modifying the target volume data.

21. Claims 54-55 are also allowable for incorporating the limitations of claim 53, and further limitations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Than Nguyen whose telephone number is 571-272-4198. The examiner can normally be reached on 8am-3pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on (571)272-4201. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Than Nguyen
Examiner
Art Unit 2187